



# California Environmental Protection Agency

Air Resources Board • Department of Pesticide Regulation • Department of Toxic Substances Control  
Integrated Waste Management Board • Office of Environmental Health Hazard Assessment  
State Water Resources Control Board • Regional Water Quality Control Boards



Dan Skopec  
Acting Secretary

Arnold Schwarzenegger  
Governor

Certified Mail: 7000 0600 0027 1154 9123

April 14, 2006

Chief Phil Kleinheinz  
City of Santa Clara Fire Department  
1500 Warburton Ave.  
Santa Clara, CA 95050

Chief Kleinheinz:

The California Environmental Protection Agency (Cal/EPA), Office of Emergency Services, and the Department of Toxic Substances Control, conducted a program evaluation of City of Santa Clara Fire Department Certified Unified Program Agency (CUPA) on September 22, 2005 and September 23, 2005. The evaluation consisted of a review of program elements, an in-office program review and field inspections. Following the evaluation, the state evaluators completed an Evaluation Summary of Findings, which was reviewed with your agency's program management.

The evaluation summary of findings includes identified deficiencies, corrective action to be taken and timeframes for correction of identified deficiencies. Two additional evaluation documents completed during the evaluation are the Program Observations and Recommendations and the Examples of Outstanding Program Implementation.

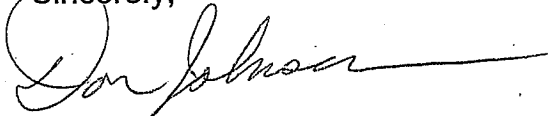
I have reviewed the enclosed copy of the Evaluation Summary of Findings and I find that City of Santa Clara Fire Department Certified CUPA program performance is satisfactory with some improvement needed. To update our files on your progress toward correcting the identified deficiencies, please provide a status report, using the attached format, within 30 days from receipt of this letter.

Cal/EPA also noted during this evaluation that the City of Santa Clara Fire Department Certified CUPA has worked to bring about program innovation, such as the placement of hazardous material forms on a web based database for public access. Additionally, as an example of outstanding program implementation, the City of Santa Clara Fire Department maintains a user friendly web site that promotes the program elements and allows public access to guidance documents, forms, fee information, and general program information. We will be sharing the outstanding program implementation examples and program innovations with the larger CUPA community through the Cal/EPA Unified Program web site to help foster a sharing of such ideas statewide.

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Thank you for your continued commitment to the protection of public health and the environment through the implementation of your local Unified Program. If you have any questions or need further assistance, you may contact your evaluation team leader or Jim Bohon, Manager, Cal/EPA Unified Program at (916) 327-5097 or by email at [jbohon@calepa.ca.gov](mailto:jbohon@calepa.ca.gov).

Sincerely,



Don Johnson  
Assistant Secretary  
California Environmental Protection Agency

Enclosures

cc: Mr. David Parker, Hazardous Materials Administrator (Sent Via Email)  
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Mr. John Paine (Sent Via Email)  
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## Deficiencies and Corrective Actions

1. Deficiency: Brief description of deficiency

CUPA Corrective Action: CUPA responds here

2. Deficiency: Brief description of deficiency

CUPA Corrective Action: CUPA responds here

3. Deficiency: Brief description of deficiency

CUPA Corrective Action: CUPA responds here

4. Deficiency: Brief description of deficiency

CUPA Corrective Action: CUPA responds here

5. Deficiency: Brief description of deficiency

CUPA Corrective Action: CUPA responds here

6. Deficiency: Brief description of deficiency

CUPA Corrective Action: CUPA responds here

7. Deficiency: Brief description of deficiency

CUPA Corrective Action: CUPA responds here



STATE OF CALIFORNIA  
ENVIRONMENTAL PROTECTION AGENCY



Alan C. Lloyd, Ph.D.  
Agency Secretary

**CERTIFIED UNIFIED PROGRAM AGENCY EVALUATION  
SUMMARY OF FINDINGS**

Arnold  
Schwarzenegger  
Governor

**CUPA: Santa Clara City Fire Department**

**Evaluation Date: September 22<sup>nd</sup> & 23<sup>rd</sup>, 2005**

**EVALUATION TEAM**

**Cal/EPA:** John Paine and Kareem Taylor  
**DTSC:** Mark Pear  
**OES:** Fred Mehr

This Summary of Findings includes the deficiencies identified during the evaluation, observations and recommendations for program improvement, and examples of outstanding program implementation activities. The evaluation findings are preliminary and subject to change upon review by state agency and CUPA management. Questions or comments can be directed to John Paine at 916-327-5092.

	<b><u>Deficiencies</u></b>	<b><u>Preliminary Corrective Action</u></b>	<b><u>Completion Timeframe</u></b>
1	<p>The CUPA is not adequately processing and annually reporting critical inspection and enforcement performance data to Cal/EPA. This has resulted in CUPA annual summary reports that depict serious performance deficiencies in the CUPA's inspection and enforcement program. However, the CUPA's inspection and enforcement activities, as documented and demonstrated on inspection reports and enforcement documents, clearly depict adequate performance.</p> <p>For example, the most recent Inspection Summary Report reflects that less than 10% of the businesses with violations are returning to compliance within the required timeframe. Whereas, the CUPA demonstrated a return-to-compliance rate at nearly 80%. Furthermore, the latest Enforcement Summary Reports data reflects virtually no enforcement actions initiated by the CUPA for hundreds of violations identified during the reporting year from compliance inspections. Whereas, the CUPA has initiated numerous informal and formal enforcement actions.</p>	<p>The CUPA will implement a data quality assurance process that ensures adequate resources are allocated to follow through with all inspection and enforcement actions.</p>	<p>April 2006</p>

**Certified Unified Program Agency (CUPA)  
Evaluation Summary of Findings**

2	<p>The Annual Inspection Summary Reports indicate the CUPA is not consistently achieving the mandated frequency for Underground Storage Tank compliance inspections. During the last three fiscal years the summary reports depict an inspection frequency rate of approximately 67%, 105%, and 70% respectively.</p> <p>The quality and validity of the information provided in the CUPA's Annual Summary Reports is questionable. The CUPA provided evidence that indicated a potential error in the Summary Report data. The frequency rates provided in reports are not consistent with the records maintained by the Hazmat Specialists who is assigned UST Program responsibly.</p>	<p>The CUPA will do the following:</p> <ul style="list-style-type: none"> <li>-Identify the actual inspection rate</li> <li>-Provide Cal/EPA will information to clarify this deficiency. If the data is inaccurate as reported, the CUPA will provide corrected data to clarify this deficiency. If in fact the frequency was not achieved, the CUPA will provide a plan of action to correct the frequency shortfall.</li> <li>-Regardless of the result, the CUPA will institute a data quality assurance process to ensure all summary report data accurately reflect their actual performance.</li> </ul>	<p>April 2006</p>
3	<p>CUPA's template for the Emergency Response Plans and Procedures, which are provided on UNIDOCs, is missing a required element; provisions for mitigation, prevention, or abatement of hazards to persons, property, or the environment.</p>	<p>The CUPA will amend the "Emergency Response Plan" template to include this missing planning element.</p>	<p>April 2006</p>
4	<p>The CUPA has not developed or implemented procedure for CalARP Dispute Resolution process.</p>	<p>The CUPA will develop and implement a CalARP Dispute Resolution Procedure that meets all the required elements in Title 19, Section 2780.1 The will document and incorporate the procedure in their Policies and Procedures manual.</p>	<p>April 2006</p>
5	<p>The CUPA's Inspection and Enforcement Plan does not reflect the actual enforcement compliance process used by the CUPA or all the enforcement options that are available to the CUPA. The CUPA periodically uses an administrative action (letter/order) and citations to effectively obtain compliance. The authority and procedure for their citations are maintained in City Ordinance.</p>	<p>The CUPA will incorporate, either by reference or in full detail, their Administrative and Citation enforcement tools into the Inspection and Enforcement Plan.</p>	<p>June 2006</p>

Certified Unified Program Agency (CUPA)  
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6	<p>The CUPA failed to take enforcement in a manner consistent with law. The CUPA failed to take enforcement appropriate enforcement actions for recalcitrant facilities where the same or similar violations were identified at routine inspections. When the CUPA found the same minor violations as prior inspections, the CUPA did not elevate the violation and take formal enforcement.</p> <p>Santa Clara Plating was inspected on 1/22/02, 10/29/03, and 7/16/04. Each inspection resulted in identification of the repetitive violations, all classified as minor. All violations were corrected within the required timeframe. The results of these inspections are as follows:</p> <p>Violations noted during the 1/22/02 inspection:</p> <ol style="list-style-type: none"> <li>1) Portable tanks missing required information</li> <li>2) Hazardous waste containers were open</li> <li>3) No signaling device at the scene of hazardous waste handling and treatment.</li> <li>4) Incorrect number of treatment tanks for FTU 001 reported on renewal.</li> </ol> <p>Violations noted during the 10/29/03 inspection:</p> <ol style="list-style-type: none"> <li>1) Portable tanks missing required information</li> <li>2) The hazardous waste containers in the lab were not properly labeled.</li> <li>2) Drums were open</li> <li>3) No TSDF signed copy for manifest in the file.</li> </ol> <p>Violations noted during the 7/16/04 inspection:</p> <ol style="list-style-type: none"> <li>1) Labels missing accumulation start date</li> <li>2) Hazardous waste containers were not closed</li> <li>3) No annual refresher training for employees was provided</li> </ol>	<p>In the future, the CUPA will correctly identify violations and will take the appropriate enforcement actions. The CUPA will ensure that inspection staff complies with the elements of the DTSC Enforcement Response Policy EO-02-003-PP, which has been adopted into the CUPA's Inspection and Enforcement Plan. Formal enforcement will be taken for class I violations.</p>	Immediately
7	<p>The CUPA failed to correctly classify violations as Class I violations and subsequently take the appropriate enforcement actions. The CUPA identified the following violation during the 12/22/03 inspection of Vishay-Siliconix:</p> <p>- One of violations cited was the following: tank system certifications for the HF treatment and acid waste neutralization systems were not update. The most recent HF certification available was from 1994. A Certification of Return to Compliance dated January 26 2004 was received by the Santa Clara Fire</p>	<p>In the future, the CUPA will correctly identify violations and will take the appropriate enforcement actions. The CUPA will ensure that inspection staff complies with the elements of the DTSC Enforcement Response Policy EO-02-003-PP, which has been adopted into the CUPA's Inspection and Enforcement Plan. Formal enforcement will be taken</p>	Immediately

**Certified Unified Program Agency (CUPA)  
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<p>Department; however, no formal enforcement had been taken for this Class I violation.</p> <p>Another example is the CUPA's 12/21/04 inspection of Hunter Technology who failed to obtain current tank system certifications for the wastewater treatment system by a registered professional engineer. A Certification of Return to Compliance dated January 11, 2004 was received by the Santa Clara Fire Department.</p>	<p>for class I violations.</p>	
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**CUPA Representative**

David R Parker  
(Print Name)

David R Parker  
(Signature)

**Evaluation Team Leader**

John Paine  
(Print Name)

J Paine  
(Signature)



## **PROGRAM OBSERVATIONS AND RECOMMENDATIONS**

1. **Observation:** Although the CUPAs Self-Audit reports address all the required elements, the reports could be more reflective of their performance during the reporting year. The reports include both descriptive (how) and actions (what) taken during the reporting year. The following examples from the 03/04 Self-Audit Report are in support this observation:

- In the, Section I.C., the CUPA did not reference their verification of SPCC plans and whether or not any referrals to the Regional Water Board were made. The language provided under to describe the “Effectiveness of permitting, inspection, and enforcement activities” throughout the report simply indicates that their activities are effective. No information is provided that describes the specific performance actions taken by the CUPA, during the reporting year that supports effectiveness or efficiency.
- Section III of the report primarily describes typical activities the CUPA performs to ensure consistency, consolidation and coordination of the Unified Program. No references are made to the specific activities taken during the reporting year.

**Recommendation:** Cal/EPA recommends that the Self-Audit Reports be written, for the most part, in the past tense so as to reflect the specific actions and activities taken during the reporting year. To CUPA may obtain this information by reviewing specific activities and projects, or from other sources, such as the monthly staff activity reports.

2. **Observation:** Although not reflected on the CUPA’s Annual Summary Reports, the CUPA has taken several enforcement actions during each reporting year. The following are examples of the enforcement actions taken:

- 8 Civil and 2 Criminal Actions were completed in FYs 01/02 and 02/03 that involved the following types of violations and associated penalties:
  - o Illegal Disposal (3 cases) – 57K in penalties
  - o Unauthorized release and not reporting release (2 cases) – 90K penalty
  - o Non-permitted Treatment (2 cases) – 28K penalty
  - o Failure to operate and maintain facilities properly, to implement contingency, to handled tanks and containers, to manage used oil filters properly, to mark and label tanks and containers - 209K penalty

**Recommendation:** None provided.

3. **Observation:** Facility Site Plan and Storage Map Instructions in UNIDOCs do not require the inclusion of adjacent property uses.

**Recommendation:** UNIDOCs needs to include in the Facility Site Plan and Storage Map Instructions to include “adjacent property uses”

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4. **Observation:** The Santa Clara County Area Plan is organized chronologically on the three phases of emergency management.

**Recommendation:** Emergency management is four phases, Preparedness, Response, Recovery and Mitigation. Mitigation eliminates or reduces the need for response and recovery.

5. **Observation:** The CUPA is doing an excellent job in ensuring that tiered permitted facilities are updating and submitting their annual Permit by Rule notifications.

**Recommendation:** Please keep up the good work.

6. **Observation:** The majority of inspection reports reviewed for minor violations had return to compliance documentation, that is, inspection reports returned with certification statements signed by the owner/operator.

**Recommendation:** Please keep up the good work.

7. **Observation:** The CUPA's inspection report does not include documentation that consent has been granted by the owner/operator to enter his place of business to conduct a hazardous waste generator inspection.

**Recommendation:** Develop an inspection report to document that consent has been granted by the owner/operator on the form. Documentation of consent only serves to strengthen any potential enforcement case defeating any potential challenge that the 4<sup>th</sup> amendment may have been abridged.

8. **Observation:** On March 30, 2004, the CUPA inspected German Auto Body and identified the following violations and a notice to comply was left after the inspection:

- No fire extinguishers are on site or in welding areas as required
- No secondary containment provided for hazardous materials areas
- Unsecured compressed gas cylinders
- Hazardous Materials Management Plan to Hazardous Materials Division not submitted or copy maintained on site
- Non-permanent extension cords used in lieu of permanent wiring.
- No covers on all electrical boxes, outlets and circuit breaker panels
- Clearance and mandated access around electrical control panels are not maintain
- No post-emergency information
- Non-circuit breaker extension cords being used.
- Electrical panels have openings where blanks should be installed

On July 16, 2004, a second notice to comply was issued. On October 1, 2004, a pre-citation notice was issued. No further documentation was found in the file.

**Recommendation:** Please keep a hard copy of documentation relating to the final resolution and disposition of a case in the file for tracking and archive.

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**EXAMPLES OF OUTSTANDING PROGRAM IMPLEMENTATION**

1. The CUPA has developed and implements an Inspection Program that promotes conducting a majority of compliance inspections as “combined” inspections. The benefits of “combined” inspections are that they consolidated the inspection of two or more Unified Program elements into one site-visit by a single inspector. The program also emphasizes employing differential inspection frequencies based on potential risk or associated hazard related to regulated businesses. While, at a minimum, state mandated inspection frequencies are maintained the CUPA has developed an increased frequency of inspections (12-18 months on average) for facilities that potentially pose a higher risk to public health and safety and impact to environment.
2. The CUPA’s coordination and communication with the City Finance Department is outstanding, ensuring adequate oversight and implementation of the single fee system and their fee accountability program. For example, monthly status reports are provided to and monitored by the CUPA administrative staff. The CUPA has been successful in achieving a very low non-collection rate (average of 5% bad debt rate) for several years. The CUPA is very timely in providing the state with their single fee information and submission of the state surcharge revenues.
3. The CUPA strives to develop and implement various customer-service related tools to streamline processes and continuously improve their implementation of the Unified Program and simplify compliance for their regulated community. For example, to CUPA’s website contains numerous guidance materials and other related document. The single fee system consolidates several annual fees onto a single invoice, in addition to the Unified Program local fees and state surcharge. Placement of hazardous materials forms on a web-based database and user interface program (UNIDOCs), which is a collaborative effort throughout the County. Coordinated efforts with other City Departments to develop new software to integrate data collected by the Business License Department and the CUPA’s inspection related data.
4. The CUPA uses all enforcement options at their disposal, incorporating options authorized under the Uniform Fire Code and their local Ordinance. These tools are in addition to the tools already available under the Unified Program. For violations that warrant formal enforcement but may not be suitable for referral to the City Attorney or District Attorney, the CUPA employs an administrative and citation process authorized in the UFC and the City Ordinance. This has proven to be an effective tool to ensure timely corrective actions and deterring further non-compliance. As outlined in City Ordinance, the citation is a notice to appeal in court and includes fines up to \$1,000, depending on the actual and severity of the violation.
5. The CUPA coordination and consolidation efforts within the City, County, and Statewide are very effective in ensuring consistent and efficient implementation of the Unified Program. The following are examples:
  - a. Development of and use of an UST installation plans checklist;
  - b. Frequent informal communication and referrals to and from other City Departments to investigate or follow-up on potential illegal activities or other violations;

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- c. Chair of the County Fire Chiefs Hazmat Response Group;
- d. Joint Hazmat exercises/drills with Civil Support Group and other responders county-wide;
- e. County-wide inspector training;
- f. County-wide environmental crimes task force;
- g. Bay Area Antiterrorism Working Group;
- h. Northern Calif. Fire Prevention Executive Committee;
- i. Development and delivery of training Korean Drycleaners Association;
- j. Improvement of UNIDOCs user interface, database, and interface between Business Plan and UST elements;
- k. UST TAG;
- l. Bay Area CUPA Forum; and
- m. Homeland Security training.

6. The CUPA has inspected all 774 known hazardous waste generators that have been identified by the CUPA. The last three annual inspection summary reports indicate the following:

- 1) 798 hazardous waste generators were identified in Fiscal Year 01/02 of which 304 were inspected.
- 2) 791 hazardous waste generators were identified in Fiscal Year 02/03 of which 356 were inspected.
- 3) 774 hazardous waste generators were identified in Fiscal Year 03/04 of which 437 were inspected.
- 4) The Santa Clara City Fire Department has inspected of all known facilities generating hazardous waste over the past three fiscal years.

7. The Santa Clara City Fire Department participated in an enforcement action with the Santa Clara County DA against Jiffy Lube International, which was settled for \$130,000. Jiffy Lube failed to operate and maintain its facilities so as to minimize the possibility of a fire, explosion, or any unplanned release of hazardous waste to air, soil, or surface water, failed to implement its contingency plan in response to a release of anti-freeze to secondary containment, failed to handle tanks and containers storing hazardous waste so to avoid spills and leaks, failed to manage used oil filters as hazardous waste, and failed to mark and label tanks and containers storing hazardous waste.

8. The CUPA is doing an excellent job inspecting Business Plan facilities by combining the Fire Dept. engine company fire code inspections with the business plan inspections. The CUPA is coordinating with the Engine Company's and Business License Departments for discovering new businesses.